

DURIE TANGRI LLP
MICHAEL H. PAGE--#154913
mpage@durietangri.com
RAGESH K. TANGRI--#159477
rtangri@durietangri.com
JOSEPH S. GRATZ--#240676
jgratz@durietangri.com
332 Pine Street, Suite 200
San Francisco, CA 94104-3214
Telephone: (415) 362-6666
Facsimile: (415) 236-6300

Attorneys for Defendants
LINDEN RESEARCH, INC. and
LINDEN RESEARCH INTERNATIONAL, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EROS, LLC, a Florida Limited Liability
Company, and SHANNON GREI, d/b/a
Nomine, an individual, on behalf of
themselves and all others similarly situated,

Plaintiffs

vs.

LINDEN RESEARCH, INC., a Delaware
Corporation, and LINDEN RESEARCH
INTERNATIONAL, INC., a Delaware Corp.,

Defendants

Case No. 4:09-cv-04269-PJH

STIPULATED PROTECTIVE ORDER

Date:
Time:
Court:

Trial Date: None set

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3 “Confidential” Information or Items: information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under F.R.Civ.P. 26(c).

2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty would create a substantial risk of serious injury that could not be avoided by less restrictive means.

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.7. Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential — Attorneys’ Eyes Only.”

2.8 Protected Material: any Disclosure or Discovery Material that is designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.10 House Counsel: attorneys who are employees of a Party.

2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party or a current employee of a competitor of a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party’s. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies,

1 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
 2 parties or counsel to or in court or in other settings that might reveal Protected Material.

3 4. DURATION

4 Even after the termination of this litigation, the confidentiality obligations imposed by
 5 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
 6 order otherwise directs.

7 5. DESIGNATING PROTECTED MATERIAL

8 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
 9 or non-party that designates information or items for protection under this Order must take care
 10 to limit any such designation to specific material that qualifies under the appropriate standards. A
 11 Designating Party must take care to designate for protection only those parts of material,
 12 documents, items, or oral or written communications that qualify – so that other portions of the
 13 material, documents, items, or communications for which protection is not warranted are not
 14 swept unjustifiably within the ambit of this Order.

15 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 16 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
 17 unnecessarily encumber or retard the case development process, or to impose unnecessary
 18 expenses and burdens on other parties), expose the Designating Party to sanctions.

19 If it comes to a Party's or a non-party's attention that information or items that it
 20 designated for protection do not qualify for protection at all, or do not qualify for the level of
 21 protection initially asserted, that Party or non-party must promptly notify all other parties that it
 22 is withdrawing the mistaken designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
 24 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
 25 material that qualifies for protection under this Order must be clearly so designated before the
 26 material is disclosed or produced.

27 Designation in conformity with this Order requires:
 28

1 (a) for information in documentary form (apart from transcripts of depositions
2 or other pretrial or trial proceedings), that the Producing Party affix the legend
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the
4 bottom of each page that contains protected material. If only a portion or portions of the material
5 on a page qualifies for protection, the Producing Party also must clearly identify the protected
6 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
7 portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

9 A Party or non-party that makes original documents or materials available for inspection
10 need not designate them for protection until after the inspecting Party has indicated which
11 material it would like copied and produced. During the inspection and before the designation, all
12 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
14 copied and produced, the Producing Party must determine which documents, or portions thereof,
15 qualify for protection under this Order, then, before producing the specified documents, the
16 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page that contains
18 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
19 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
20 appropriate markings in the margins) and must specify, for each portion, the level of protection
21 being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
22 EYES ONLY”).

23 (b) for testimony given in deposition or in other pretrial or trial proceedings,
24 that the Party or non-party offering or sponsoring the testimony identify on the record, before the
25 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify
26 any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’
27 EYES ONLY.” When it is impractical to identify separately each portion of testimony that is
28

entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately designated for protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or nonparty offering or sponsoring the witness or presenting the testimony.

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they qualify as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. If material is appropriately designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's confidentiality designation must do so in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

6.3 Intervention. A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the justification for the confidentiality designation that was given by the Designating Party in the meet and confer dialogue.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
 3 or produced by another Party or by a non-party in connection with this case only for prosecuting,
 4 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
 5 to the categories of persons and under the conditions described in this Order. When the litigation
 6 has been terminated, a Receiving Party must comply with the provisions of section 11, below
 7 (FINAL DISPOSITION).

8 Protected Material must be stored and maintained by a Receiving Party at a location and
 9 in a secure manner that ensures that access is limited to the persons authorized under this Order.

10 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
 11 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
 12 disclose any information or item designated CONFIDENTIAL only to:

13 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
 14 employees of said Counsel to whom it is reasonably necessary to disclose the information for
 15 this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is
 16 attached hereto as Exhibit A;

17 (b) the officers, directors, and employees (including House Counsel) of the
 18 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
 19 signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

20 (c) experts (as defined in this Order) of the Receiving Party to whom
 21 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
 22 Bound by Protective Order” (Exhibit A);

23 (d) the Court and its personnel;

24 (e) court reporters, their staffs, and professional vendors to whom disclosure
 25 is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
 26 Protective Order” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author of the document or the original source of the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached hereto as Exhibit A;

(b) House Counsel of a Receiving Party (1) who has no involvement in patent prosecutions, (2) to whom disclosure is reasonably necessary for this litigation, and (3) who has signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(c) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have been followed;

(d) the Court and its personnel; and

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation.

7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to “Experts”

1 (a) Unless otherwise ordered by the court or agreed in writing by the
2 Designating Party, a Party that seeks to disclose to an “Expert” (as defined in this Order) any
3 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
4 EYES ONLY” first must make a written request to the Designating Party that (1) sets forth the
5 full name of the Expert and the city and state of his or her primary residence, (2) attaches a copy
6 of the Expert’s current resume, (3) identifies the Expert’s current employer(s), (4) identifies each
7 person or entity from whom the Expert has received compensation for work in his or her areas of
8 expertise or to whom the expert has provided professional services at any time during the
9 preceding five years, (5) identifies (by name and number of the case, filing date, and location of
10 court) any litigation in connection with which the Expert has provided any professional services
11 during the preceding five years, and (6) identifies all Second Life Resident account names used
12 by the Expert or his or her employees or associates within the preceding five years.

13 (b) A Party that makes a request and provides the information specified in the
14 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,
15 within seven court days of delivering the request, the Party receives a written objection from the
16 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

17 (c) A Party that receives a timely written objection must meet and confer with
18 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
19 agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert
20 may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule
21 79-5, if applicable) seeking permission from the court to do so. Any such motion must describe
22 the circumstances with specificity, set forth in detail the reasons for which the disclosure to the
23 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and
24 suggest any additional means that might be used to reduce that risk. In addition, any such motion
25 must be accompanied by a competent declaration in which the movant describes the parties’
26 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
27
28

discussions) and sets forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

In any such proceeding the Party opposing disclosure to the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective

1 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
2 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
3 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
4 this Order, and (d) request such person or persons to execute the “Acknowledgment and
5 Agreement to Be Bound” that is attached hereto as Exhibit A.

6 10. FILING PROTECTED MATERIAL.

7 Without written permission from the Designating Party or a court order secured after
8 appropriate notice to all interested persons, a Party may not file in the public record in this action
9 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
10 with Civil Local Rule 79-5.

11 11. FINAL DISPOSITION.

12 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
13 after the final termination of this action, each Receiving Party must destroy all Protected
14 Material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
15 compilations, summaries or any other form of reproducing or capturing any of the Protected
16 Material. In the alternative, the Receiving Party may return some or all of the Protected Material
17 to the Producing Party instead of destroying it. Whether the Protected Material is returned or
18 destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if
19 not the same person or entity, to the Designating Party) by the sixty day deadline that identifies
20 (by category, where appropriate) all the Protected Material that was returned or destroyed and
21 that affirms that the Receiving Party has not retained any copies, abstracts, compilations,
22 summaries or other forms of reproducing or capturing any of the Protected Material.

23 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
24 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work
25 product, even if such materials contain Protected Material. Any such archival copies that contain
26 or constitute Protected Material remain subject to this Protective Order as set forth in Section 4
27 (DURATION), above.

28

12. MISCELLANEOUS

12.1 Right to Further Relief.

Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections.

By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: October 23, 2009

/s/ Michael J. Aschenbrenner

Attorneys for Plaintiffs

DATED: October 23, 2009

/s/ Michael H. Page

Attorneys for Defendants

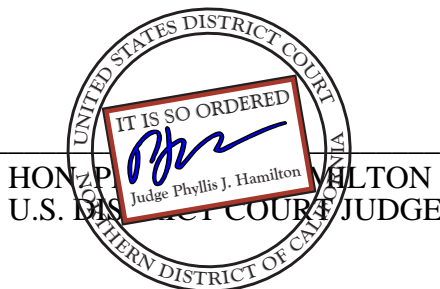
FILER'S ATTESTATION

Pursuant to General Order No. 45, Section X (B) regarding signatures, I, Michael H. Page, attest that concurrence in the filing of this document has been obtained.

/s/ Michael H. Page
Michael H. Page

IT IS SO ORDERED:

DATED: October 26, 2009



CERTIFICATE OF SERVICE

I certify that all counsel of record is being served on October 23, 2009 with a copy of this document via the Court's CM/ECF system.

Alan Himmelfarb, Esq.

Consumerlaw1@earthlink.net

Michael J. Aschenbrener, Esq.

maschenbrener@kamberedelson.com

By: /s/ Michael H. Page
Michael H. Page

Attorneys for Defendants
LINDEN RESEARCH, INC. and
LINDEN RESEARCH INTERNATIONAL, INC.